

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
ILLINOIS VALLEY CELLULAR RSA 2, INC.)	FCC File No. 000035142
)	
To Modify Fixed Microwave Service Stations)	
WMM680, Pontiac, Illinois and WMS806,)	
Gilman, Illinois)	

ORDER

Adopted: August 7, 2000

Released: August 8, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On August 26, 1999, Illinois Valley Cellular RSA 2, Inc. (IVC) submitted an application to modify the facilities for Station WMM680, Pontiac, Illinois, and Station WMS806, Gilman, Illinois.¹ In connection with its application, IVC requests a waiver of Section 101.81 of the Commission's Rules that would otherwise require the stations to be authorized on a secondary basis.² For the reasons stated herein, we deny IVC's waiver request.

II. BACKGROUND

2. The Commission has reallocated portions of the 2 GHz band from fixed microwave services (FMS) to emerging technology (ET) services, including the personal communications services (PCS).³ To this end, the Commission has adopted certain transition rules.⁴ First, rather than immediately clearing the 2 GHz band of incumbent FMS users, the Commission permits incumbent FMS users to continue to occupy the band on a co-primary basis with the ET licensees for a significant length of time, by the end of which the incumbents are to relocate to another portion of the spectrum.⁵ ET licensees have the option, however, of requiring the FMS incumbents to relocate sooner if they pay the additional costs

¹ Illinois Valley Cellular, RSA 2 Inc. Application for Authorization in the Microwave Services, FCC File No. 0000035142 (filed Aug. 26, 1999) (IVC Application).

² 47 C.F.R. § 101.81.

³ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rulemaking*, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992) (*ET First Report and Order*).

⁴ See 47 C.F.R. §§ 101.69-101.81. The rules are intended to accommodate the FMS licensees in a manner that would be most advantageous for the incumbent users, least disruptive to the public and most conducive to the introduction of new services. See *ET First Report and Order*, 7 FCC Rcd at 6886-87 ¶ 5.

⁵ 47 C.F.R. §§ 101.69(b), 101.79(a). See also *ET First Report and Order*, 7 FCC Rcd at 6886-87 ¶ 5.

caused by the earlier relocation.⁶ Second, the Commission is authorizing new FMS stations and most modifications of FMS stations only on a secondary basis to ET systems.⁷ Most minor modifications of FMS stations are also authorized on a secondary basis unless the licensee can demonstrate that it needs primary status and that the modifications will not add to the relocation costs to be paid by the ET licensee.⁸ One practical effect of these rules is that incumbent FMS licensees authorized on a primary basis will have the costs of relocating to other bands paid for by the new ET licensees if the ET licensees force them to relocate. On the other hand, ET licensees are under no obligation to pay to relocate 2 GHz links that are authorized on a secondary basis to ET systems.⁹

3. On August 26, 1999, IVC filed an application for authorization to modify the facilities of Stations WMM680 and WMS806.¹⁰ The proposed modifications for each station include adding a diversity antenna and increasing the bandwidth from 3.2 MHz to 3.5 MHz.¹¹ In connection with this application to modify its authorizations, IVC requests a waiver of Section 101.81 of the Commission's Rules, which provides that all major modifications to existing FMS stations in the 2 GHz band will be authorized on a secondary basis to ET systems.¹²

III. DISCUSSION

4. We note, as an initial matter, that the proposed increase in bandwidth for Stations WMM680 and WMS806 constitutes a major modification.¹³ Without a waiver of Section 101.81, IVC's modified licenses would be granted only on a secondary basis.¹⁴ We may grant a request for waiver of a rule if the requesting party shows (i) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁵ IVC has not shown that it meets either of these standards. We therefore deny IVC's request that we waive Section 101.81 of the Rules.

⁶ 47 C.F.R. §§ 101.69(a), 101.71-101.77.

⁷ 47 C.F.R. § 101.81. *See* Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825, 8868 ¶ 88 (1996) (*Cost Sharing First Report and Order*).

⁸ 47 C.F.R. § 101.81.

⁹ *See Cost Sharing First Report and Order*, 11 FCC Rcd at 8869 ¶ 89.

¹⁰ *See* IVC Application.

¹¹ *Id.*

¹² 47 C.F.R. § 101.81.

¹³ 47 C.F.R. § 1.929(d)(1)(iii). Adding a diversity antenna is considered a minor equipment change. *See* 47 C.F.R. §§ 1.929(k), 101.81(h).

¹⁴ 47 C.F.R. § 101.81.

¹⁵ 47 C.F.R. § 1.925(b)(3).

5. In support of its request, IVC states its microwave system existed prior to January 16, 1992.¹⁶ IVC also notes that the proposed increase in bandwidth is necessary to accommodate increased traffic from additional cell sites in its wide-area cellular telephone network and concludes that the increase in bandwidth would serve the public interest.¹⁷ Finally, IVC asserts that the proposed modifications will not add to the potential relocation costs to be incurred by an ET licensee.¹⁸

6. We are not persuaded by IVC's arguments. First, the licensing policy that maintained primary status for microwave systems in existence prior to January 1, 1992,¹⁹ upon which IVC appears to rely, was explicitly superseded by the Commission in 1995 and thus is not a persuasive factor in our consideration of IVC's application.²⁰ Furthermore, we are not convinced that the public interest requires a waiver of the Commission's carefully considered 2 GHz policies to accommodate IVC's voluntary business decision to modify its facilities to handle additional traffic from cell sites and increased subscriber traffic.²¹ Lastly, IVC's reliance on the argument that the relocation costs will not be affected by its proposed changes is misplaced, for the Commission has decided that the effect on relocation costs is a relevant decisional factor only when licensees propose minor modifications, and not when they propose major modifications, such as increasing the bandwidth.²²

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 101.69 of the Commission's Rules, 47 C.F.R. §§ 1.925, 101.69, that the request for a waiver filed by Illinois Valley Cellular RSA 2, Inc. on August 26, 1999, is DENIED.

8. IT IS FURTHER ORDERED that application FCC File No. 0000035142 to modify the facilities for Stations WMM680 and WMS806, filed August 26, 1999, SHALL BE PROCESSED by the Public Safety and Private Wireless Divisions, Licensing and Technical Analysis Branch in accordance with the applicable Commission Rules.

¹⁶ IVC Application at Exhibit A.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See Two Gigahertz Fixed Microwave Licensing Policy, *Public Notice*, Mimeo No. 23115 (rel. May 14, 1992).

²⁰ See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *Notice of Proposed Rule Making*, WT Docket No. 95-157, 11 FCC Rcd 1923, 1925 ¶ 4 (1995); see also, e.g., GTE Mobilnet of Santa Barbara Limited Partnership, *Order on Reconsideration*, DA 00-1424, ¶ 8 (WTB PSPWD rel. June 27, 2000).

²¹ See Pass Word, Inc., *Order on Reconsideration*, 14 FCC Rcd 17,180, 17,183 ¶ 7 (WTB PSPWD 1999); Virginia Cellular Limited Partnership, *Order on Reconsideration*, 14 FCC Rcd 15,904, 15,908 ¶ 11 (WTB PSPWD 1999).

²² See, e.g., Cybertel RSA Cellular, L.P., *Order*, 15 FCC Rcd 5577, 5578-79 ¶ 5 (WTB PSPWD 2000); Cameron Telephone Company, *Order*, 14 FCC Rcd 17,873, 17,875-76 ¶ 6 (WTB PSPWD 1999).

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau